Opinion D. 1099

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

FILED

SEP 12 1972

Superior Court of the District of Columbia Tax Division

THE WASHINGTON THEATER CLUB, INC., :

Petitioner :

v. : Docket No. 2161

:

DISTRICT OF COLUMBIA, :

Respondent :

MEMORANDUM OPINION AND ORDER

Petitioner, the Washington Theater Club, Inc., requests this Court to exempt its property from real estate tax liability. Petitioner is a nonprofit corporation organized in the District of Columbia and is the record owner of real property described as lots numbered 805-807, in square numbered 0051, together with the improvements thereon known as premises number 1101 23rd Street, N.W., Washington, D.C. On June 25, 1969, the petitioner applied to the District of Columbia for an exemption from real estate taxation with respect to the property here described, basing its application on the premise that it was at that time an educational institution within the meaning of 47 D.C. Code 801a(j) (1967 ed.). Denying the application, the District imposed a real estate tax in the amount of $8,926.72 plus a penalty of $267.80 against the property for the period July 1, 1971, through June 30, 1972.[1] The petitioner appealed to this Court from the above assessment on November 17, 1971, in compliance with Section 47-801e.[2]

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[1] Although not in evidence, petitioner's brief admits that petitioner was assessed a D.C. Real Estate tax in the amount of $8,647.76, plus penalty in the amount of $518.87, for the prior 1971 fiscal year, all of which remains unpaid.

[2] Section 47-801(e) explicitly states that the payment of taxes is not a prerequisite to an appeal. Absent this provision, the Court notes that it would lack jurisdiction since the petitioner has failed to pay the property taxes complained of. See District of Columbia v. Berenter, U.S.App. D.C., Slip Op. No. 24,003 (1972).

THE ISSUE

Section 47-801a provides:

> The real property exempt from taxation in the District of Columbia shall be the following and none other:
>
> Subsection
>
> (j): Buildings belonging to and operated by schools, colleges or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student.
>
> (r)(1): Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of Section 47-801(a). . . .

The question presented to this Court, which must be examined in three parts, is whether the property known as 1101 23rd Street, N.W., including the improvements thereon, is, within the statutory meaning of Section 47-801a(j): (1) a school, college or university (and if so found, must it be operated exclusively as such); (2) which is not operated for private gain; and (3) which embraces the generally recognized relationship of teacher and student.

FINDINGS OF FACT

Petitioner was organized July 19, 1963, as a nonprofit membership corporation pursuant to the provisions of the District of Columbia Nonprofit Corporation Act.[3] The Articles of Incorporation stated its purpose to be:

> [t]o establish and maintain a benevolent and educational center wherein and whereby the society may undertake and carry out the promotion and teaching of all visual, performing and dramatic arts and the skills involved therein, for the mutual improvement of the society's members and of the citizenry at large; in accordance therewith to create and conduct a school for the teaching and development of such arts and skills, to produce and to sponsor the production of theatrical and all other performances and exhibits in connection with the society's educational activities and for the benefit of the citizenry at large, and to undertake any project or activity which appears to the society to be proper and desirable as a means for advancement of its members' and other citizens' interest and participation in the development, enjoyment, and learning of all such arts and skills.[4]

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[3] 29 D.C. Code 1001 (1967 ed.).

[4] Petitioner's Exhibit No. 1.

On May 28, 1969, the petitioner became record owner of the property designated at 1101 23rd Street, N.W.[5] Situated at this location was a church building. Petitioner converted the upper floor into a theater auditorium with a seating capacity of approximately 400, and the lower floor to an office, box office, lobby and classrooms. The surrounding land area is utilized for vehicle parking,[6] although the evidence does not reflect whether the petitioner collects any parking fees.

The petitioner is involved in two functions: (a) the operation of a professional resident theater, and (2) the operation of a school. The theatrical activities are readily apparent. In conjunction with the theater auditorium, petitioner also maintains at 1101 23rd Street the other concomitant areas required so as to enable it to present several full-scale theatrical productions a year. Utilized in the productions are a cast of professional actors, all of whom are members of the professional actor's union known as the Actor's Equity Association. Depending upon the casting requirements of the particular play, the petitioner may employ between six and twelve actors at any one time. These actors are paid an average of $180.00 per week with the majority of them being employed for only a seven-week period.[7] Although the petitioner has an educational program in which students are trained in the various aspects of acting, only the union actors are actually permitted to perform in the productions in any significant way.[8]

5/ D.C. Land Records, Deed No. 10297, Liber 12997, Folio 584.

6/ Petitioner's Exhibit No. 32.

7/ Respondent's Exhibit B.

8/ Petitioner's Exhibit No. 5. The Court understands that an "Equity" theater may occasionally use non-union actors for very minor roles.

Much of petitioner's resources are expended in the attempt to make its public theater a financial success.[9] During the play season, the petitioner actively solicits ticket sales and employs three administrative directors (executive, managing, and artistic), a fund raiser, a subscription sales manager, two secretaries, five people in ticket sales (representing a box office manager, two box office assistants, a house manager, and a group sales director), and several personnel in production which include a production manager and various technicians.[10] Approximately 82% of the petitioner's total income will be expended on its public theater.[11]

The petitioner's educational activities consist of three major programs: the Adult Workshop, the Teenage Theater, and the Junior Stage. The petitioner offers courses in acting techniques, dance, scene study, speech, improvisation, creative dramatics, introduction to acting, intermediate acting, advanced acting, playwriting, mime, directing, vocal development, movement, and other similar courses relating to theatrical production. The courses are offered on a ten-week semester basis with three regular semesters during each calendar year plus a summer program. The adult courses are given once weekly for two hours during the evening and the teenage theater courses are held on Saturdays for a period of five hours. During the summer program, the Teenage Theater classes meet six hours on Mondays, Wednesdays and Fridays, and the Junior Stage's classes meet on the same days for one and a half hours. A tuition is charged for each course and, except during the summer session, the

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9/ Petitioner has had an overall operating deficit in the past years. Petitioner's Exhibits Nos. 27, 28 and 29.

10/ Respondent's Exhibit B.

11/ Petitioner's estimates reveal that $316,000 out of a total income of $469,150 will be obtained through ticket sales, and that it will spend $384,900 out of total expenditures of $472,080 for its public theater. Petitioner's Exhibits Nos. 17 and 18.

fee for the adult courses is $75.00 per course; for Teenage courses, $100.00 per course; and for Junior Stage courses, $50.00 per course.[12] There are no compulsory classes or prescribed readings, and no written or oral examinations either during or at the conclusion of the courses, and petitioner does not award any type of degree or accredited diploma for successfully completing a line of study. Petitioner's school, which remains unaccredited by the District of Columbia Board of Education, or by any other recognized accrediting agency, accommodates approximately 800 students a year (although the evidence does not reflect what number of these students attend on a regular basis) and at the time of the trial, the current enrollment was approximately 150 students. Having both a full-time and assistant director, the petitioner also normally employs ten part-time teachers, many of whom hold advanced academic degrees.

In addition to its own educational program, petitioner has training arrangements with various accredited schools by which students from these schools attend petitioner's courses and receive credit at their home school. Petitioner currently has ten such students attending its facilities for credit.[13]

Approximately 13% of petitioner's income will come from tuitions and only 18% of its expenditures will go for the operation of the school.[14] But as to its total building use, petitioner has estimated that 30% of the building use time is spent on the professional play productions, whereas the other 70% is used for educational purposes.[15]

In November, 1965, the petitioner was granted an exemption from Federal Income Tax as an organization described in Section 501(c)(3) of the

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[12] Petitioner's Exhibits Nos. 19 and 23.

[13] Petitioner's Exhibits Nos. 4 and 20.

[14] Petitioner's Exhibits Nos. 17 and 18.

[15] Petitioner's Exhibit No. 16.

Internal Revenue Code.[16] And in December, 1969, the District of Columbia Board of Zoning Adjustment found that petitioner "qualifies as a private school within the meaning of . . . Section 3101.42 of the Zoning Regulations by promoting and teaching skills for the performing and dramatic arts for improvement of members of the public at large as an educational center."[17]

Prior to the petitioner's existence, the Washington Drama Society, Inc. (Arena Stage) had applied to the District of Columbia for a real property tax exemption pursuant to Section 47-801a(j). At the time of its application, Arena Stage conducted activities similar to those of petitioner's, including both the professional theater and the theatrical school, and in April, 1962, the Corporation Counsel formally exempted it from the payment of real and personal property taxes.[18]

Petitioner's Contentions

The petitioner argues that its real estate here in issue should be exempt from taxation on the following grounds:

1. The cumulative effect of the petitioner's Federal Income Tax exemption as an educational institution under Section 501(c)(3) of the Internal Revenue Code, the District of Columbia's Board of Zoning Adjustment ruling that petitioner "qualified as a private school" within the meaning of Section 3101.42 of the Zoning Regulations, and the Corporation Counsel's Arena Stage decision should weigh heavily in the petitioner's favor.

2. Petitioner's Articles of Incorporation reflect the intention to establish a school to teach the visual, performing and dramatic arts.

3. Even if the language of Section 47-801a(j) implied the necessity of exclusive use of buildings for school purposes, it would not necessarily

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16/ Petitioner's Exhibit No. 2. Section 501(c)(3) of the Internal Revenue Code reads in pertinent part as follows: (c) List of Exempt Organizations. . . .(3) Corporations . . . organized and operated exclusively for . . .educational purposes. . . no part of the net earnings of which inures to the benefit of any private shareholder or individual. . . .

17/ Petitioner's Exhibit No. 24.

18/ Petitioner's Exhibit No. 23.

follow that other functions would automatically bar the exemption.

5. Section 47-801a(j) should be interpreted to mean that the physical facilities must be primarily used for school purposes and the facts show that the petitioner in the hourly use of its total facilities devotes the majority of time for school purposes.

6. The theatrical productions play a vital role in the petitioner's educational functions.

7. The Court should weigh the cataclysmic effect the denial of the exemption will have against the benefits the exemption would provide to culture and the arts in our Nation's Capitol.

Respondent's Contentions

In rebuttal, the Government argues that:

1. The theatrical productions presented each year absorb an overwhelming proportion of petitioner's resources and revenues.

2. The fact that students are at liberty to attend or not to attend a period of instruction, and are not required to meet any educational standards or submit to any examinations militates against the petitioner being a "school, college or university" within the meaning of Section 47-801a(j).

3. The statute exempts "schools, colleges or universities" and not social clubs or hobby groups. The petitioner primarily attracts individuals seeking a source of diversion and relaxation and does not attract those interested in making a career of acting.

4. The Court should strictly construe the tax exemption statute against those claiming the exemption.

5. The petitioner is primarily a theater which charges an admission fee to its plays and which retains professional actors to perform.

6. The District of Columbia is not relieved of any part of its burden to the community by the activities of the petitioner.

OPINION AND CONCLUSIONS OF LAW

The Court is called upon to construe the clear wording of Section 801a(j), which encompasses three requisites of an owner to qualify for the real property tax exemption. This provision is succinctly segmented to the operation of a school, not for private gain, with a generally recognized teacher-student relationship.

I. It is not difficult to conclude that the petitioner satisfies the portions of Subsection (j) which require of the petitioner not to be "organized or operated for private gain." The evidence in the record clearly reveals that the petitioner's 1963 charter created a nonprofit corporation with no stockholders and with none of the income to inure to the benefit of any of the officers or directors.[19/] It is true that some of the officers and directors who are employed by the petitioner receive income, but the income is for their services performed for the corporation and not the type of benefits which disturb the nonprofit character of the corporation.[20/]

II. The requisite "generally recognized relationship of teacher and student" is sufficiently supported by petitioner's evidence. Petitioner employs part-time teachers, some of whom hold advanced academic degrees, who conduct classes in a formal setting within the building. The Government does not cite nor has the Court found any authority on the point that the lack of a curriculum of prescribed reading, compulsory classes or examinations, gainsay the existence of a "generally recognized relationship of teacher and student."

III. In determining the status of petitioner as an educational institution, the existence of the petitioner (1) not organized or conducted for

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19/ Petitioner's Exhibit No. 1.

20/ Section 29-1002(c) of the District of Columbia Nonprofit Corporation Act provides: "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this chapter shall be construed as prohibiting the payment of reasonable compensation for services rendered. . . ."

profit, and (2) embracing the requisite teacher-student relationship, does not ipso facto mean that the petitioner is an educational institution within the meaning of Section 47-801a(j), since the legislators "made application of these two conditions contingent upon the basic and fundamental prerequisite that the applicant have the status of a school, college or university."[21/]

The determination of this case is now narrowed to the issue of whether petitioner qualifies as a school since it is apparent it is not a college or university and it does not resemble a school in the ordinary sense. In reaching its conclusion, the Court has utilized the following guidelines:

(1) Strict Construction. Exemptions from taxation are strictly construed against those claiming the exemption, even if the claimant is "a[n] . . . educational institution, because such exemptions are in the nature of a renunciation of sovereignty, and are at war with sound basic tax philosophy which requires a fair distribution of the burden of taxation."[22/] However, a strict construction of the statute in the instant case does not require a strained interpretation which would "defeat or nullify the intention of the legislature."[23/]

A logical collorary of the strict construction mandate is the principle that the burden of proving the tax exemption status rests with the exemption claimant.[24/]

(2) Education as the Prime Objective. Although not requiring that education be the exclusive objective of the petitioner, Section 47-801a(j) does require that it should be the prime objective. Not only is this

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21/ Washington Chapter of American Institute of Banking v. District of Columbia, 92 U.S.App. D.C. 139, 142; 203 F2d 68 (1953).

22/ Id., 92 U.S.App. D.C., at page 141.

23/ Little Theatre of Watertown, Inc. v. Hoyt, 165 N.Y.S.2d 292, 295 (Sup.Ct. 1956), aff'd., 167 N.Y.S. 2d 240 (App. Div. 1957).

24/ Chester Theatre Group of the Black River Playhouse, Inc. v. Borough of Chester, 115 N.J. Super. 360, 362; 279 A2d 878 (1971).

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interpretation substantiated in case law,[25] but a complete reading of Section 47-801 necessitates such a conclusion. Section 47-801b reads that:

> If any building or any portion thereof, or grounds belonging to and actually used by any institution or organization entitled to exemption under the provisions of sections 47-801a . . . are used to secure a rent or income for any activity other than that for which exemption is granted such building, or portions thereof, or grounds, shall be assessed and taxed.

Thus, we may assume from this provision that exclusively educational activities are not necessary.

(3) Corporate Activities. The Court in determining whether a claimant is entitled to an educational tax exemption is not limited to viewing merely the claimant's stated objectives, but may also look at the activities, as shown by the evidence, which are actually carried on.[26]

(4) Activities Which District Might Reasonably Assume. The educational institution claiming tax exemption under Section 47-801a must render a service which relieves the District of Columbia of a burden it otherwise might reasonably assume.[27] The Court is cognizant of the recent trend to limit this quid pro quo doctrine,[28] even in the District of Columbia;[29] however, the still viable case of Washington Chapter of American Institute of Banking v. District of Columbia, supra, directly applies the doctrine to educational institutions seeking real property tax exemptions within the District.

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[25] Washington Chapter of American Institutes of Banking v. District of Columbia, supra.

[26] See Hazen v. National Rifle Association of America, Inc., 69 U.S. App. D.C. 339; 101 F2d 432 (1938).

[27] Id., pp. 341-342.

[28] See McKee v. Evans, 490 P2d 1226, 1229-30 (1971).

[29] See District of Columbia v. National Wildlife Federation, 93 U.S.App. D.C. 387; 214 F2d 217 (1954)

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The petitioner has urged that its Federal income tax exemption, the Zoning Board's finding, and the Corporation Counsel's decision in Arena Stage should all weigh heavily in favor of petitioner. In answer to each one of these contentions, the Court concludes that:

Petitioner's Federal income tax exemption under Section 501(c)(3) of the Internal Revenue Code as a corporation organized exclusively for educational purposes is of no legal import in the case at bar. The tax exemption granted was based upon petitioner's own self-serving correspondence to the Internal Revenue Service; there was not then, nor has there been since the granting, any fact finding hearing to settle the averments on which the claim was based.

The Board of Zoning Adjustment's finding on December 10, 1969, that petitioner qualified as a private school under Section 3101.42 of the Zoning Regulations has no bearing on the actual use of petitioner's property in furtherance of its primary objective for the fiscal year in question. It is evident from the Order[30/] that the Board based its determination merely on the petitioner's proposals and objectives as set out in Article 4 of the Articles of Incorporation.[31/] In deciding the issue in the present case, this Court must follow the principle as found in Hazen v. National Rifle Association of America, supra, that not only must the petitioner's stated objectives be considered, but also the activities which are actually carried on.

The Arena Stage decision of the Corporation Counsel, though entitled to consideration[32/] is not controlling upon this Court. Reorganization Order

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30/ Petitioner's Exhibit No. 24.

31/ Petitioner's Exhibit No. 1.

32/ "A Court may properly resort to decisions of administrative agencies for guidance, the weight accorded a particular decision being dependent upon the thoroughness evident in its consideration, the validity of its reason, its consistency with earlier and later pronouncements, and all those facts which give it power to persuade." 2 Am.Jur.2d, Ad.Law Section 478.

No. 50, D.C. Code, Title 1, App., at 59 (Supp. IV, 1971):

> Such opinions, (referring to those of Corporation Counsel), in the absence of specific action by the Commissioner or Council to the contrary, or until overruled by controlling court decision, shall be the guiding statement of law. . . .

The Court recognizes the significant similarities between the objectives and activities of petitioner and those of Arena Stage; however, there is awareness also of the differences. Furthermore, it is important to note that the Counsel's written opinion concluded on a cautious note in describing the uniqueness of Arena Stage and the opinion was "limited to the Society, to its organization, and to its activities as they presently exist and are described in the presentation. . . .".[33/]

The petitioner has also advanced the argument that the theatrical productions are so interconnected with the classroom activities as to be inseparable from them. This the Court cannot accept. It is true that the petitioner conducts educational activities with the "generally recognized relationship of teacher and student," and it is apparent that the subjects taught are of the type of which the District of Columbia might reasonably assume the teaching. (Evidence the fact that a few students from accredited colleges receive credit for taking courses in the petitioner's facilities.) However, the theatrical productions are not of such as to bring them within the meaning of Section 47-801a(j). The dramatic productions may be educational in nature as noted in the case of Chester Theatre Group, etc. v. Burough of Chester, supra, where the New Jersey Court ruled that the presentation of the dramatic arts advance the intellectual and social bases of man, and "a general educational purpose is fulfilled in that the public is provided with a means to appreciate these art forms." However, the Chester Theatre Court dealt with a statute exempting, ". . . all buildings actually and

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33/ Petitioner's Exhibit No. 23, 8-9.

exclusively used in the work of associations and corporations exclusively for the moral and mental improvement of men, women and children. . . ."[34/] This Court agrees that the presentation of the dramatic arts may be morally and educationally uplifting, but such an achievement under the District of Columbia statute in the instant case would fall short of qualification. The Court simply cannot find a "generally recognized relationship of teacher and student" existing between petitioner's paying audience and its actors on the stage.

The petitioner has further contended that the play productions are actually a continuation of its students' education and are "the culmination of all of the work and effort comprising the educational program.", citing Little Theatre of Watertown, Inc. v. Hoyt, supra. Yet a close reading of the case reveals that the Little Theatre utilized the talents of its members in preparing for the play productions and also in the giving of the actual performance, and did not rely as does petitioner upon the use of professional actors. Even in granting the exemption to Arena Stage, the District of Columbia Corporation Counsel dealt with the situation where the theater, although relying on professional actors, had an agreement with the Actor's Equity Association which allowed students to participate in the stage productions. Here, petitioner is solely a professional theater with the use of its students on the stage minimal at most, and the Court therefore rejects the argument that the stage productions are a culmination of petitioner's educational activities.

The Court must finally determine the weight in actuality that the petitioner has placed upon its school as compared to its professional theater. As previously postulated, the petitioner's operations must be primarily that of a school if it is to qualify for a tax exemption under Section 47-801a(j). Although mindful of the great emphasis petitioner places upon the 70% building time use spent on its school activities, the Court in balancing all of the factors concludes that the cumulative effect of the petitioner's expenditures, sources of income, and professional actor hiring practices far outweigh the

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[34/] N.J.S.A. 54:4-3.6.

time use of petitioner's facilities. Not only does the petitioner spend nearly five times more money for its professional theater productions than it does for the school, but the productions also generate over five times more income than the school tuitions. Also, the petitioner's lack of a full-time teaching staff coupled with the fact that the majority of the petitioner's employees are involved with the theater productions rather than the school weighs heavily against the petitioner.

It is incumbent upon the Court to acknowledge the petitioner's good faith attempt to satisfy the statutory requirements of Section 47-801a(j) and the benefits bestowed upon the District from the petitioner's activities. However, the evidence substantiates that the petitioner's primary activity is the operation of a professional theater and not an educational institution. The Court, therefore, holds that the property owned by the petitioner which is the subject of this action is not exempt from real property taxation as an educational institution and that the real estate assessment for taxes and penalties was proper.

It is, therefore, this 7th day of September, 1972,

ORDERED that the petition of the Washington Theater Club, Inc. for a real property tax exemption under 47 D.C. Code 801a as an educational institution be and it is hereby denied.

By the Court,

W. BYRON SORRELL
JUDGE

Copies to:

Charles Duncan, Esq.
Attorney for Petitioner

Kenneth West, Esq.
Attorney for Respondent

O P I N I O N S

NO.	PETITIONER	DATE
1077	JACK M. GOLDKLANG	March 12, 1969
1078	LAWRENCE I. PEAK	May 22, 1969
1079	SUSAN E. O. BREAKEFIELD	July 11, 1969
1080	CHRISTOPHER DE JEAN HERCULES	August 29, 1969
1081	ANNE NICHOLS and JACK NICHOLS and THEODORE NICHOLS	October 20, 1969
1082	NATIONAL PARKS ASSOCIATION	December 2, 1969
1083	ALLEN BERENTER, et al	January 13, 1970
1084	CHESTER W. and ELEANOR R. HEPLER	February 17, 1970
1085	JOHN CLAY SMITH, Jr.	April 13, 1970
1086	ELLEN U. FLYNN	April 16, 1970
1087	TRUST CREATED UNDER THE WILL OF KATHERINE S. SEVERN, Stanley S. Harris, Trustee and TIMOTHY MAYO,	May 11, 1970
1088	ESTATE OF HELEN S. ROCKWELL, deceased, et al	July 21, 1970
1089	Estate of CHARLES S. WISE, Deceased, IRENE B. WISE, Executrix	August 10, 1970
1090	UNIVERSAL COMPUTER ASSOCIATES, INC. SUCCESSOR TO COMERCIAL VENTURES, INC.	August 19, 1970
1091	FRANCES H. CLAYTOR	April 21, 1971
1092	KLAUS KLATT	June 10, 1971
1093	DAVID A. SWIT	July 21, 1971
1094	LAURENCE P. DALCHER	February 9, 1972
1095	THE MARYLAND SYNOD OF THE LUTHERAN CHURCH IN AMERICA	May 5, 1972
1096	CHARLOTTE A. HANKIN	May 18, 1972
1097	THE REGENTS OF THE UNIVERSITY OF MICHIGAN	June 9, 1972
1098	LINDA POLLIN MEMORIAL HOUSING CORPORATION	June 9, 1972
1099	THE WASHINGTON THEATER CLUB, INC.	September 12, 1972